

**DOCKET FILE COPY ORIGINAL**

Commenter: KMC Telecom Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: December 19, 1997

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of )

Application by BellSouth )

Corporation et al. for Provision of )

In-Region, InterLATA Services in )

Louisiana )

CC Docket No. 97-231

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**REPLY COMMENTS OF KMC TELECOM INC.  
IN OPPOSITION TO BELL SOUTH'S APPLICATION FOR  
INTERLATA AUTHORITY IN LOUISIANA**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

KMC Telecom Inc. ("KMC"), through undersigned counsel, hereby submits its reply comments on the Section 271 application for in-region interLATA authority in Louisiana filed by BellSouth Corporation et al. ("BellSouth") on November 6, 1997.

- 1. The presence of PCS providers in the Louisiana market does not qualify BellSouth for Track A consideration.**

In its initial comments, KMC pointed out that the purpose of Track A was to enable consideration of applications for interLATA authorization in light of the actual experience of a facilities-based competing carrier serving business and residential customers. Such experience would help the State Commissions and this Commission to determine whether the RBOCs' offers of access and interconnection comply with the checklist when in actual operation in the competitive marketplace. KMC argued that PCS providers do not fulfill the Congressional purpose, because they connect to the incumbent network in a manner that is significantly different from wireline competitors and does not involve the OSS problems that plague access

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and interconnection for wireline competitors in Louisiana. KMC Comments at 2-4. KMC also argued that treating PCS providers as “competing” providers was inconsistent with the Congressional purpose, because PCS serves as a complement to traditional wireline services rather than as a substitute. KMC Comments at 4.

Ameritech’s comments argue that as a legal matter PCS is a “telephone exchange service.” Ameritech Comments at 4-9. In addition, Ameritech argues that because Congress excluded CMRS but not PCS from Track A, Congress must have intended to include PCS. Ameritech Comments at 9.

Ameritech’s arguments are not sufficient to preclude the Commission from looking to the Congressional purpose in order to determine the scope of Track A. To conclude that PCS providers are providers of “telephone exchange service” does not bring this case within the statutory requirements for Track A; to qualify for Track A, section 271(c)(1)(A) requires BellSouth to show that PCS providers are “competing” providers of PCS service. Moreover, Congress did not exclude CMRS (without PCS) “from Track A,” as Ameritech argues. Ameritech Comments at 9. The last sentence of section 271(c)(1)(A) excludes CMRS (not including PCS) from the definition of “telephone exchange services.” That leaves the Commission the responsibility to determine whether or not PCS providers are “competing” providers of telephone exchange service -- as they must be for Track A to apply. The word “competing” may not be ignored. “[E]ffect must be given, if possible, to every word, clause and sentence of a statute . . . so that no part will be inoperative or superfluous, void or insignificant.” National Ass’n of Recycling Industries, Inc. v. ICC, 660 F.2d 795, 799 (D.C. Cir. 1981).

The DOJ Comments correctly point out that PCS services are “substantially more expensive than wireline,” are “priced differently,” and have only a “limited degree of substitution.” DOJ Comments at 8-9. In light of these factors, the Commission has ample discretion to conclude that PCS providers are not “competing.” That conclusion is well within the language of the statute, since on its face the term “competing” certainly suggests consideration of the economic factors discussed by the Department of Justice. That conclusion is also supported by the irrelevance of PCS operating experience to the access and interconnection problems of wireline carriers. Nothing in the arguments made by Ameritech suffices to narrow the Commission’s discretion in interpreting the term “competing,” or to preclude the Commission from considering the Congressional purpose in determining whether PCS providers fall within the scope of Track A.

**2. The Louisiana PSC has not answered the questions raised concerning BellSouth’s OSS performance.**

In its initial comments, KMC described instances in Louisiana and Alabama in which it has received inadequate OSS support, below the level BellSouth provides its own personnel. KMC Comments at 11-12 and attached Affidavits of Miller and Davis. KMC also argued that its experience was confirmed by the findings of the ALJ, as well as the Florida Public Service Commission, that BellSouth’s OSS performance was inadequate and discriminatory. KMC Comments at 12-13 and n.3. Finally, KMC argued that BellSouth’s performance data failed to show that its OSS performance did not discriminate. KMC Comments at 14-15.

KMC’s concerns have now been supported by the Department of Justice, which has concluded that “BellSouth has failed to implement support systems that provide CLECs with

access to the basic functionalities at parity with its own systems.” DOJ Comments at 20 (emphasis in original). In addition, DOJ agreed with KMC’s assessment of BellSouth’s performance data, concluding that “BellSouth has not instituted performance measures that will enable it to demonstrate -- through objective criteria -- that it can provide wholesale performance at parity with its own retail performance where such a comparison can be made, and a meaningful opportunity to compete, where no retail counterpart is available.” DOJ Comments at 19 (emphasis in original).

The comments of the Louisiana Public Service Commission (“LPSC”) do not answer these concerns. These comments state that the LPSC held a “technical demonstration” which three Commissioners attended, and this demonstration showed that BellSouth’s OSS systems “were fully functional and allowed [CLECs] to place, confirm, and implement orders to establish and provision local exchange service in Louisiana.” LPSC Comments at 28. This summary suggests that the technical demonstration did not address the crucial issue of discrimination at all: the issue is not whether BellSouth’s OSS systems “allow” CLECs to “place, confirm and implement” orders, but whether CLECs can do so in the same time period as BellSouth’s own sales representatives. And in any event, a technical demonstration at most shows the technical capabilities of the system in demonstration conditions; such a demonstration needs to be supplemented with adequate data on actual use, which is lacking in this case.

Indeed, as the Department of Justice points out, the fact that a majority of the Commissioners apparently based their decision on a technical demonstration undermines rather than supports the decision, since it tends to show that the LPSC did not consider issues

concerning actual use and performance parity. DOJ Comments at 19.

Moreover, despite the LPSC's comments, the LPSC's decision remains totally unexplained. The decision (at p. 15) finds BellSouth's OSS "do in fact work and operate to allow potential competitors full non-discriminatory access to the BellSouth system." The LPSC comments do nothing more than parrot this conclusory finding. LPSC Comments at 28. An agency decision that fails to address crucial issues in the case -- including issues raised by the agency's own ALJ -- is entitled to no deference. Panhandle Eastern Pipe Line Co. v. FERC, 881 F.2d 1101, 1116 (D.C. Cir. 1989).

**3. BellSouth has not answered crucial questions concerning provision of unbundled element combinations.**

In its opening comments, KMC argued that BellSouth violated the competitive checklist by insisting on collocation as the only procedure for CLECs to gain access to its network for purposes of recombining network elements that BellSouth has separated pursuant to the Eighth Circuit's recent decision. Collocation, KMC argued, is not legally required, and imposes unnecessary expense in violation of section 251(c)(3) and item (ii) of the checklist. KMC Comments at 4-10.

The DOJ Comments point out that there is presently pending before the LPSC a request by BellSouth that the LPSC amend its regulations to provide for requesting carriers to obtain access to the BellSouth network by collocation in order to recombine separated elements. DOJ Comments at 12 n. 20. AT&T has opposed this request, taking the position that the LPSC should require that requesting carriers be permitted direct access to unbundled elements and be furnished with the technical information necessary for recombining separated elements. Ibid.

Until this issue is resolved by the LPSC and the parties have a chance to comment on the LPSC's resolution, this Commission does not have sufficient information to make a finding that BellSouth has complied with its obligation under section 251(c)(3) to provide network elements in a manner allowing the requesting carrier to combine them in order to provide local exchange service.

In its comments, the LPSC points out that it has required BellSouth to amend its SGAT to include a provision that a requesting carrier is entitled to "access to all of the unbundled elements that, when combined by the requesting carrier, are sufficient to enable the requesting carrier to provide telecommunications service." LPSC Comments at 11. However, this provision does not address the critical questions of whether such access will involve the unnecessary expenses of collocation, and whether the requesting carriers will receive the technical information needed to recombine separated elements. Until the LPSC resolves these issues, there is no basis for a finding that BellSouth has complied with the checklist.

**4. BellSouth's refusal to pay reciprocal compensation for local calls to information service providers violates the competitive checklist.**

In its initial comments, KMC pointed out that the competitive checklist requires reciprocal compensation arrangements for "transport and termination of telecommunications," and argued that this obligation extends to all calls not subject to access charges. KMC Comments at 15-16. Since local calls to information service providers are not subject to access charges, they are subject to reciprocal compensation. Ibid. Accordingly, BellSouth's position that it will not pay reciprocal compensation for local calls to information service providers violates the checklist. Ibid.

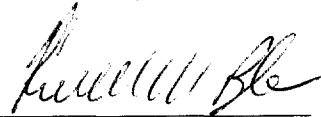
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The LPSC comments do not adequately answer this concern. They point out that the Act authorizes bill-and-keep arrangements between carriers and that Louisiana regulations require bill-and-keep as an interim compensation method, pending establishment of permanent rates. LPSC Comments at 18-19. However, KMC does not have a bill-and-keep arrangement with BellSouth; and the LPSC has already fixed permanent rates (including a permanent rate for reciprocal compensation).<sup>1</sup> Thus there is no basis in the Act or the Louisiana regulations for BellSouth's continued refusal to pay reciprocal compensation.

#### CONCLUSION

BellSouth's application for interLATA authority in South Carolina should be denied.

Respectfully submitted,



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Dated: December 19, 1997

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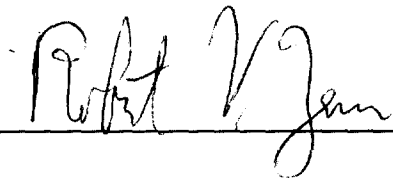
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<sup>1</sup> Rates for reciprocal compensation appear in BellSouth's SGAT. See Exh. AJV-1 to Varner Affidavit, Atch. A p. 7.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REPLY COMMENTS OF KMC TELECOM INC. IN OPPOSITION TO BELLSOUTH'S APPLICATION FOR INTERLATA AUTHORITY IN LOUISIANA were served to each on the attached mailing list, either by Hand Delivery (as designated with an asterisk (\*)), or by First Class Mail, postage prepaid, this 19th day of December 1997.



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